

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re Ex Parte Application of
Create S.D Co. LTD,

Applicant.

CASE NO. 2:25-mc-00026-JNW

ORDER GRANTING APPLICATION
TO SERVE DISCOVERY UNDER
28 U.S.C. § 1782

Create S.D. Co., Ltd. (“Create SD”) filed an ex parte application for leave to serve Amazon Technologies, Inc. and Amazon Web Services, Inc. (collectively, Amazon) with subpoenas for use in a Japanese lawsuit, as permitted by 28 U.S.C. § 1782. Dkt. No. 1. Having carefully considered the motion and applicable law, the Court grants the application, without prejudice to Amazon’s right to object or move to quash, for the reasons below.

At the outset, the Court notes that “[a]pplications for discovery pursuant to § 1782 are frequently issued ex parte, and the Federal Rules of Civil Procedure only govern the consequent discovery after the application is granted.” *In re Caterpillar Credito*, No. 22-cv-1549-JLR, 2022 WL 2022 WL 16744212, at *5, n.8 (W.D. Wash. Nov. 6, 2022). Accordingly, the Court finds it appropriate to consider the motion ex parte.

1 Turning to the relevant statute, 28 U.S.C. § 1782 requires applicants seeking
2 discovery for use in a foreign proceeding to demonstrate: “(1) the request is made ‘by
3 a foreign or international tribunal’ or ‘any interested person’; (2) the discovery is ‘for
4 use in a proceeding in a foreign or international tribunal’; and (3) the person from
5 whom the discovery is sought ‘resides or is found’ in the district of the district court
6 where the application is made.” *In re Nichiei Intec Co.*, No. 2:23-mc-00066-JHC,
7 2023 WL 7001666, at *1 (W.D. Wash. Oct. 24, 2023) (quoting 28 U.S.C. § 1782).
8 28 U.S.C. § 1782 is satisfied because Create SD is a litigant in an ongoing Japanese
9 proceeding and because Amazon “resides or is found” in the Western District of
10 Washington. *See In re Sailed Tech. (Beijing) Co., Ltd.*, 2:22-cv-01396-JHC, 2023 WL
11 3568151, at *4 (W.D. Wash. May 18, 2023) (citing *Intel Corp. v. Advanced Micro*
12 *Devices, Inc.*, 542 U.S. 241, 256 (2004) (finding a litigant is an “interested person”
13 under 28 U.S.C. § 1782)).

14 In deciding whether to permit discovery under the statute, courts may also
15 consider the discretionary *Intel* factors. *See Intel Corp.*, 542 U.S. at 264–265. The
16 first factor considers whether the application seeks discovery from a participant in
17 the foreign proceeding. *Id.* at 264. Because Amazon is not a litigant in the ongoing
18 foreign proceeding, this factor favors permitting discovery. *See* Dkt. No. 2 at 3.

19 Under the second factor, courts consider the “receptivity of the foreign
20 tribunal.” *Intel Corp.*, 542 U.S. at 264. Unless there is some evidence that the
21 foreign tribunal would reject the discovery sought, the court may conclude that this
22 factor favors permitting discovery. *See id.* Here, Create SD’s attorney has submitted
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1 a declaration stating that Japanese courts would be receptive to the discovery that
2 Create SD seeks. Dkt. No. 2 at 3.

3 As for the third factor, it considers whether the request “conceals an attempt
4 to circumvent foreign proof-gathering restrictions or policies.” *Intel Corp.*, 542 U.S.
5 at 264. Create SD’s attorney also attests that the discovery sought does not
6 circumvent foreign policies or restrictions on evidence gathering. Dkt. No. 2 at 3.

7 Finally, the fourth factor considers whether the discovery sought is “unduly
8 intrusive or burdensome.” *Intel Corp.*, 542 U.S. at 265. On preliminary review, the
9 Court cannot say that the discovery sought is unduly intrusive or burdensome. *See*
10 Dkt. No. 1-1 (proposed discovery). Considering these discretionary factors, the Court
11 finds that they weigh in favor of permitting discovery.

12 Accordingly, the Court APPROVES Create SD’s application to serve discovery
13 on Amazon. Dkt. No. 1.

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15 Dated this 17th day of June, 2025.

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Jamal N. Whitehead
United States District Judge
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